

REMARKS

This Amendment and Remarks are filed in response to the Restriction Requirement dated April 20, 2007.

Currently pending claims in the application are 4-9, 13-17, 19 and 21-37.

Claim 13 that depends on canceled claim 12 is amended to be depend on claim 23.

RESPONSE TO THE RESTRICTION REQUIREMENT

Examiner requires restriction to one of the following inventions under 35 U.S.C. 121:

Group I. Claims 4-9, 13-17, 21, 23-28 and 30-37, drawn to a method for treatment of a cartilage lesion and for formation of a superficial cartilage layer, classified in class 424, subclass 426.

Group II. Claims 19, 22 and 29, drawn to a method for treatment of a cartilage lesion and for formation of a superficial cartilage layer, classified in class 424, subclass 422.

Examiner argues that the inventions are independent or distinct, each from the other because:

Inventions I and II are directed to related methods. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. In the instant case, the inventions as claimed are different methods such that each can be performed without the other. The method of invention I does not require steps a) -f) or a)-g) required by the claims of the methods of invention II.

The method of invention II does not require a neo-cartilage construct prepared by any method, and a top sealant

selected from components as required by the method of invention I.

Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the invention or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at

least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Applicants elect, with traverse, to prosecute the Group I, claims 4-9, 13-17, 21, 23-28 and 30-37. The traverse is based on the Examiner's admission that inventions I and II are directed to related methods. Applicants submit that the inventions are NOT mutually exclusive and that one invention comprises additional steps in essentially the same method. However, to advance the examination, Applicants elected the Group I and canceled claims listed in Group II.

As to the species election, applicants elect, with traverse, a species collagen as the compound for preparation of the support matrix and a species polyethylene glycol cross-linked with methylated collagen as the compound used as a bottom or top sealant. Claim 4 encompasses the collagen species, Claims 7, 8, 23, 24, 30, 31 and 32 encompass the sealant species. The traverse is based on the suitability of any collagen containing compound for preparation of the support matrix. The variable collagen or collagen-containing compound affects the properties of the support matrix while the collagen, particularly Type I collagen, is preferred for preparation of the support matrix, the other named compounds may be used instead, depending on the required properties for such implant.

A similar argument is applicable to the sealant species. The methylated collagen/PEG is the preferred top and/or bottom sealant, however, other sealants, particularly those where the PEG is derivatized with collagen/collagen compound may be exchangeably used.

It is respectfully requested that Examiner withdraw the species election requirement.

SUMMARY

In summary, Applicants elected to prosecute Group I, including the species, canceled claims directed to group II invention and amended claims as appropriate.

It is believed that with this amendment, the pending claims are in conditions for examination and immediate allowance. Notice of Allowance is respectfully solicited.

The Commissioner is authorized to charge or credit Deposit Account No. 16-1331 as needed for filing this response.

Respectfully submitted,

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